

SUMMONS IN A CIVIL ACTION

United States District Court

FOR THE
NORTHERN DISTRICT OF GEORGIA

Executive Registry

76-3654

4 Oct 76

CIVIL ACTION FILE NO. _____

C76-1633A

REBER BOULT and OSCAR
SQUELLA-AVENDANO,

Plaintiff

v.

CENTRAL INTELLIGENCE AGENCY
and GEORGE BUSH, Director,
CENTRAL INTELLIGENCE AGENCY

Defendant

SUMMONS

To Defendant upon whom
this complaint is served:This copy of complaint &
summons was served upon
you on _____
(date)

To the above named Defendant :

You are hereby summoned and required to serve upon

N. DAVID BUFFINGTON

plaintiff's attorney , whose address is

88 Walton Street N.W.
Atlanta, GA 30303an answer to the complaint which is herewith served upon you, within 60 days after service of this
summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be
taken against you for the relief demanded in the complaint.

BEN H. CARTER

Clerk of Court.

Mary E. Hall

Deputy Clerk.

[Seal of Court]

Date: October 4, 1976

OGC Has Reviewed

NOTE:—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

FILED IN CLERK'S OFFICE

OCT 1 1976

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

BEN H. CARTER, Clerk
By: *[Signature]* Deputy Clerk

REBER BOULT and OSCAR
SQUELLA-AVENDANO,
Plaintiffs,

v.

Civil Action No.

C76-1633A

CENTRAL INTELLIGENCE AGENCY and
GEORGE BUSH, DIRECTOR
Defendants

COMPLAINT

JURISDICTION

1. This is an action under the Freedom of Information Act, 5 U.S.C. §552 (hereinafter "FOIA"), to require defendants to permit access to certain records in their possession pertaining to plaintiff Squella-Avendano.

2. This Court has jurisdiction over this action pursuant to 5 U.S.C. §552(a) (4) (B), 28 U.S.C. §1331, 1361, and the First and Fifth Amendments. The value of the rights in controversy exceeds \$10,000 exclusive of interest and costs.

PARTIES

3. Plaintiff Boulton is an attorney for plaintiff Squella-Avendano. He instituted certain FOIA requests in an attempt to gain exculpatory materials not given to the defense in the criminal trial of plaintiff Squella-Avendano for use in a petition for habeas corpus.

4. Plaintiff Squella-Avendano is a Chilean citizen who was arrested in Miami, Florida on July 27, 1970 and convicted in 1972 for the alleged importation of cocaine. Plaintiff Squella-Avendano has steadfastly maintained his innocence and contends that, because he was an active campaigner and supporter of Salvador Allende, he was framed by a combination

of government agencies as a part of this government's attempts to affect the internal affairs of Chile. The Central Intelligence Agency is one of those agencies and is a defendant in this action. Other agencies are defendants in another similar action and one remaining agency is still handling the plaintiffs' requests administratively.

5. Defendant Central Intelligence Agency is an agency of the Executive Branch in which the documents are located; Defendant George Bush is Director of the Central Intelligence Agency and is sued in his official capacity as custodian of the requested documents, and as head of the agency in which the requested documents are located.

FACTUAL ALLEGATIONS

6. By letter dated October 10, 1975, addressed to Mr. Robert S. Young, a copy of which is attached hereto as Exhibit A, plaintiffs requested access to the requested documents.

7. By letter dated August 2, 1976 plaintiffs were sent 13 documents out of a total of 99 which the agency listed in its possession. Plaintiffs paid \$133.60 for the above documents. A copy of this letter is attached as Exhibit B.

8. By letter dated August 19, 1976 addressed to Gene F. Wilson, CIA Information Review Committee, a copy of which is attached hereto as Exhibit C, plaintiffs appealed both the deletions and the denial of documents.

9. By letter dated August 31, 1976, plaintiff received acknowledgement of receipt of appeal. A copy of this letter is attached as Exhibit D.

10. Plaintiffs have exhausted their administrative remedies.

FIRST CAUSE OF ACTION

11. Plaintiffs are entitled, pursuant to 5 U.S.C. §552 (a), to inspect and copy the requested documents and portions of

documents to which access has been denied.

SECOND CAUSE OF ACTION

12. The collection and maintenance of information on plaintiff Squella-Avendano by defendants is violative of his right to freedom of association and privacy guaranteed by the First Amendment.

13. The failure and refusal of defendants to allow plaintiffs access to the requested documents is violative of their rights to freedom of speech, press, and association, which rights are guaranteed by the First Amendment.

THIRD CAUSE OF ACTION

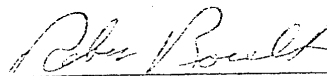
14. The failure and refusal by defendants to allow plaintiffs access to the requested documents is violative of plaintiff Squella-Avendano's Fifth Amendment rights to due process of law in that such actions deny him a full and fair opportunity to obtain evidence to support an attack upon his criminal conviction.

WHEREFORE, plaintiffs pray that this Court:

- (1) Provide for expeditious proceedings in this action as provided in 5 U.S.C. §552 (a) (4) (D);
- (2) Order defendants to permit access to the requested documents and portions of documents;
- (3) Award plaintiffs their costs and reasonable attorney's fees in this action; and
- (4) Grant such other and further relief as the Court may deem just and proper.

N. DAVID BUFFINGTON
Attorney for Plaintiffs

88 Walton Street, N.E.
Atlanta, Georgia 30303
(404) 524-1280


REBER BOULT
Attorney for Plaintiffs

Law Project of R. Boulton, et al.
Suite 834-15 Peachtree St. N.E.
Atlanta, Georgia 30303
(404) 523-4611

Mr. Robert S. Young
Freedom of Information Coordinator
Central Intelligence Agency
Washington, D.C. 20505

This is a request under the Freedom of Information Act and other applicable administrative, statutory, and constitutional provisions, including the first amendment.

It may assist in your search to note that he is presently incarcerated in federal prison as the result of a criminal conviction in the U.S. District Court for the Southern District of Florida, No. 70-572-Cr-CF in January, 1972. Agencies of the United States possessed information about his activities, associations, and background in Chile at that time and such information is included in this request. For example, part of the information sought is the file maintained on him at the American Embassy in Santiago.

If you determine that some or all of the requested information is exempt from release, I would appreciate your advising me as to which exemption(s) you believe covers the information

which you are not releasing.

I point out at this time that § 552(b)(7)'s exemption for investigatory records should not apply to any information developed in connection with the prosecution since that prosecution is now finished and no purpose specified in that subsection would be served by continuing to hold the information in confidence.

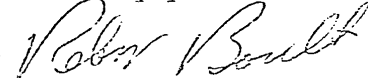
My client is prepared to pay reasonable costs specified in your regulations for locating the requested files and reproducing them.

As you know, the amended Act permits you to reduce or waive the fees if that "is in the public interest because furnishing the information can be considered as primarily benefiting the public." I believe that this request plainly fits that category and ask you to waive any fees.

If you have any questions regarding this request, please telephone me at the above number.

As provided for in the amended Act, I will expect to receive a reply within ten working days.

Sincerely yours,



Reber Boulton

RB/vc

2 AUG 1976

Mr. Reber Boulton
Suite 834
15 Peachtree Street, NE
Atlanta, GA 30303

Dear Mr. Boulton:

This is in response to your request for all information in CIA files pertaining to your client, Oscar Squella-Avendano, a Chilean national now incarcerated at the Federal Penitentiary in Atlanta.

We have made a thorough search of our files and found a number of items pertaining to Mr. Squella. I am enclosing copies of 15 of them for your retention. The first eight, given to you in their entirety, are:

1. Foreign Broadcast Information Service (FBIS) Daily Report, dated 2 July 1969, page E5.
2. FBIS Daily Report, dated 11 July 1972, page E9.
3. Joint Publications Research Service (JPRS) #56647, dated 31 July 1972.
4. JPRS #50606, dated 27 May 1970.
5. Department of Justice Press Release, Tuesday, dated 23 July 1970.
6. Chilean press clipping, dated February 1973.
7. Miami Herald press clipping, dated 28 January 1972.
8. Chilean press clipping, dated 31 July 1970.



You will note in the remainder of the items certain portions have been deleted. I am listing them below, and alongside each is the number of the appropriate exemption from the Freedom of Information Act which gives the reasons why the deletions had to be made. An explanation of the exemptions follows later in this letter.

<u>Document</u>	<u>FOIA Exemption</u>
9. Indices Search Result, undated.	(b) (3), (b) (6)
10. Cable, dated 14 December 1968.	(b) (1), (b) (3)
11. Cable, dated 29 July 1970.	(b) (1), (b) (3)
12. Cable, dated 29 January 1972.	(b) (1), (b) (3)
13. Cable, dated 1 March 1974.	(b) (1), (b) (3)

In addition, there were a number of documents which could not be released, even with deletions. I am listing them below, again with the appropriate FOIA exemptions.

<u>Document</u>	<u>FOIA Exemption</u>
14. Investigative Report, dated 7 September 1970.	(b) (3), (b) (6), (b) (7)
15. Memorandum, dated 30 July 1970.	(b) (3), (b) (7)
16. TWX Letter of Assignment, dated 30 August 1970.	(b) (3), (b) (6), (b) (7)
17. Memorandum, dated 3 August 1970.	(b) (3), (b) (6), (b) (7)
18. TWX message, dated 4 August 1970.	(b) (3), (b) (7)
19. Memorandum, dated 10 August 1970, with attachments.	(b) (3), (b) (6), (b) (7)
20. Memorandum, dated 17 August 1970.	(b) (3)
21. Memorandum, dated 21 August 1970.	(b) (3)
22. Memorandum, dated 9 December 1970, with attachment.	(b) (3)

23. Memorandum, dated 31 January 1972. (b)(3)
24. Memorandum, dated 2 May 1972. (b)(3), (b)(7)
25. Memorandum, dated 13 September 1972. (b)(3)
26. Communications Report. (b)(1), (b)(3)
- 27-77. 50 cables. (b)(1), (b)(3)
78. Memorandum, dated 26 August 1970. (b)(1), (b)(3)
79. Memorandum, dated 20 August 1970. (b)(1), (b)(3)
80. Memorandum, dated 10 August 1970. (b)(1), (b)(3)
81. Memorandum, dated 24 September 1970. (b)(1), (b)(3)
82. Memorandum, dated 15 October 1970. (b)(1), (b)(3)
83. Memorandum, dated 21 December 1970. (b)(1), (b)(3)
84. Memorandum, dated 6 March 1971. (b)(1), (b)(3)
85. Memorandum, dated 5 April 1971. (b)(1), (b)(3)
86. Memorandum, dated 2 August 1971. (b)(1), (b)(3)
87. Memorandum, dated 23 February 1972. (b)(1), (b)(3)
88. Memorandum, dated 16 March 1972. (b)(1), (b)(3)
89. Memorandum, dated 2 May 1972. (b)(1), (b)(3)
90. Dispatch, dated 22 June 1962. (b)(1), (b)(3)
91. Dispatch, dated 31 October 1969. (b)(1), (b)(3)
92. Dispatch, dated 17 April 1970. (b)(1), (b)(3)
93. Dispatch, dated 7 August 1970. (b)(1), (b)(3)
94. Dispatch, dated 1 March 1972. (b)(1), (b)(3)
95. Dispatch, dated 27 April 1972. (b)(1), (b)(3)
96. Information Report, dated 20 October 1970. (b)(1), (b)(3)

97. Information Report, dated (b)(1), (b)(3)
3 March 1971.
98. Information Report, dated (b)(1), (b)(3)
16 March 1972.

The applicability of the Freedom of Information Act subsections cited above is explained as follows:

- (b)(1) applies to material which is properly classified pursuant to Section 1 of Executive Order 11652, and is exempt under Section 5(E) of the same Order;
- (b)(3) applies to the Director's statutory obligations to protect from disclosure intelligence sources and methods, as well as the organization, functions, names, official titles, salaries or numbers of personnel employed by the Agency, in accord with the National Security Act of 1947 and the CIA Act of 1949, respectively;
- (b)(6) applies to information release of which would constitute an unwarranted invasion of the personal privacy of other individuals; and,
- (b)(7) applies to investigatory records, release of which could (C) constitute an unwarranted invasion of the personal privacy of others, (D) disclose the identity of a confidential source, or (E) disclose investigative techniques and procedures.

Mr. Charles W. Kane, our former Director of Security, is the Agency official responsible for the deletions in items 9 and 14 through 26; Mr. Charles A. Briggs, Chief of our Services Staff, for items 10 through 13, and 27 through 98. Under the Act you have the right to appeal both the deletions and the denials to the CIA Information Review Committee. If you choose to do so, please write me, stating in full the basis for your appeal.

The Chief of the Freedom of Information Unit of the Drug Enforcement Administration of the U.S. Department of Justice forwarded two CIA documents which they had found in their files while responding to the request which you had levied on them on 10 October 1975. One of the two was identical with item 85 in our list of denied documents above. A copy of the second document, which I have numbered 99, is attached. Portions of this document were deleted by Mr. Briggs in accordance with exemptions (b)(1) and (b)(3) of the Freedom of Information Act, as explained above.

The total charges for servicing your request come to \$133.60, computed at five hours of clerical search time @ \$4 per hour (\$20), and 14 hours of professional search time @ \$8 per hour (\$112) for a total search charge of \$132, plus a copying charge of \$1.60 for 16 pages @ 10¢ a page. Since we have already received your deposit of \$66, you should send \$67.60, by check or money order made out to the Treasurer of the United States, by return mail.

There were also a number of State Department, FBI, and DEA documents in Mr. Squella's file. We have forwarded them to these agencies, and they will notify you of their disposition directly.

Sincerely,

Charles F. Savage
for Gene F. Wilson
Information and Privacy Coordinator

Enclosures

THE LAW PROJECT

Robert Dault
Al Horn
Jim Jenkins
Mary Joyce Johnson
Lawyers

August 19, 1976

Gene F. Wilson
CIA Information Review Committee
Washington, D.C. 20505

Stephanie Coffin
Vanetta Collett
Mike Barbauf
Pam Rynnie
Susan Schaefer
Legal Workers

Re: Oscar Squella-Avendano
Freedom of Information Appeal

Dear Mr. Wilson:

This is to state that we are appealing both the deletions and the denial of documents which were sent to us in your letter of August 2, 1976.

Regarding the exemptions claimed under (b) (1), we have substantial doubts how the release of information could be reasonable expected to cause damage to the national security or foreign relations of the United States. Additionally we question what criteria were applied in the decision to classify this material, who classified each document, whether the documents were classified totally and, if portions of the documents which were not released were not classified, whether a downgrading determination is marked on documents and if so, what date is specified on each document, and finally to whom the documents were distributed.

Regarding the exemptions claimed under (b) (3), we know of no statute which supports this exemption to withhold information and therefore we appeal the materials withheld under this exemption.

Regarding the (b) (6) exemption, we question what interest is paramount over the interest of Oscar Squella to gain information to aide in his struggle for freedom and the public's right to know the scope of the country's meddling in internal Chilean affairs.

Regarding (b) (7) claims, we question how the CIA can use this exemption given the purpose of the CIA as an intelligence agency and not a law enforcement agency.

Considering each of the above exemptions, given the paucity of the materials released, we have tried to state the reasons why we feel our appeal should be granted and the information be released to us immediately.

As provided for in the Act, we will expect to receive a

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(404) 523-4611

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reply within 20 working days. We have initiated suit against other agencies for denying the release of materials on Oscar Squella and if you are unable to order the release of the requested information, we intend to add your agency as a defendant to this lawsuit.

Sincerely,


Robert Boulton

cc: Oscar Squella

31 AUG 1976

Mr. Reber Boulton
Suite 834
15 Peachtree Street, NE
Atlanta, GA 30303

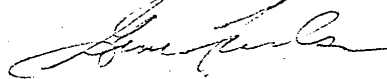
Dear Mr. Boulton:

Your letter of 19 August 1976 was received on 25 August 1976.

This acknowledges receipt of your check for \$67.60 in payment of the remaining fee due for your FOIA request on behalf of Oscar Squella-Avendano.

Arrangements will be made for consideration of your appeal by the Information Review Committee and you will be informed of the outcome as soon as the Committee's deliberations are completed.

Sincerely,



Gene F. Wilson
Information and Privacy Coordinator



EXECUTIVE SECRETARIAT

Routing Slip

TO:		ACTION	INFO	DATE	INITIAL
1	DCI				
2	DDCI				
3	D/DCI/IC				
4	S/MC				
5	DDS&T				
6	DDI				
7	DDA				
8	DDO				
9	D/DCI/NIO				
10	GC	✓			
11	LC				
12	IG				
13	Compt				
14	D/Pers				
15	D/S				
16	DTR				
17	Asst/DCI				
18	AO/DCI				
19	C/IPS				
20					
21					
22					
SUSPENSE		Date			

Remarks: